

MAIL STOP INTERFERENCE
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Paper 1

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Interference No. 105,250

Dow Chemical Company

(5,527,929)
Junior Party,

v.

Basell Polyolefine GmbH

(09/851,643),
Senior Party.

MAILED

SEP 14 2004

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

DECLARATION

A. Declaration of interference

An interference is declared (35 U.S.C. 135(a)) between the captioned parties.

Details of the application, patent, count, and claims designated as corresponding to the count appear under headings E and F of this DECLARATION.

B. Administrative patent judge designated to administer the interference

Administrative Patent Judge Richard Torczon has been designated to administer this interference. 37 CFR § 41.104(a) [Bd. R. 104(a)].

C. Standing order

A copy of the Trial Section STANDING ORDER [SO] (Paper 2) accompanies this DECLARATION. The STANDING ORDER applies to this interference.

D. Conference call to set dates

A telephone conference call to set dates for action in this interference is scheduled for **2 p.m. (Eastern) on 8 November 2004.** (The Board will initiate the call.)

No later than **two business days** prior to the conference call, each party shall file and serve by facsimile (SO ¶ 4.5) a list of the motions (Bd. R. 120; Bd. R. 204; SO ¶ 26) the party intends to file.

A sample schedule for taking action during the motion phase appears as Form 2 in the STANDING ORDER. Counsel are encouraged to discuss the schedule prior to the conference call and to agree on dates for taking action. A typical motion period lasts approximately eight (8) months. Counsel should be prepared to justify any request for a shorter or longer period.

The Board is conducting a pilot program in electronic filing of interference papers (Bd. R. 106(d)(2)). The procedure is explained in University of New Mexico v. Fordham Univ., No. 104,761, Paper 21 (2001).¹ Counsel should be prepared to discuss participation in the pilot program.

¹ <http://www.uspto.gov/web/offices/dcom/bpai/its/104761-021.pdf>.

E. The parties to this interference

Junior Party

Inventors: Francis J. Timmers and David D. DeVore

Patent: US 5,527,929 [Dow], issued 18 June 1996
(08/482,135, filed 7 June 1995)

Title: Zwitterionic biscyclopentadienyl complexes

§102(g) benefit: None

Senior Party

Inventors: Gerhard Erker, Bodo Temme, Michael Aulbach, Bernd Bachmann,
and Frank Kuber

Application: 09/851,643 [Basell], filed 8 May 2001
(reissue of US 6,002,032, issued 14 December 1999)

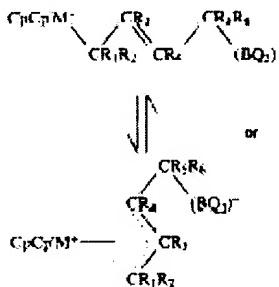
Title: Transition metal compound

§102(g) benefit: 08/478,900, filed 7 June 1995 (US 6,002,032)
DE 44 20 456, filed 13 June 1994

F. Count and claims of the parties

Count 1: A metal complex of claim 1² of US 5,527,929.

² 1. A metal complex corresponding to one of the two zwitterionic equilibrium structures of the formula:



wherein:

M is titanium, zirconium or hafnium in the +4 formal oxidation state;
 Cp and Cp' are each a substituted or unsubstituted cyclopentadienyl group bound in an η^5 bonding mode to M , said substituted cyclopentadienyl group being substituted with from one to five

The claims of the parties are:

Dow: 1-3
Basell: 1-21

The claims corresponding to Count 1:

Dow: 1-3
Basell: 1-21

G. Heading to be used on papers

Addendum 1 provides the heading that shall be used on all papers filed in the interference. See SO ¶ 7.2.1.

The range of exhibit numbers is assigned as follows (Bd. R. 154(c)(1); SO ¶ 20.2.1):

Basell Polyolefine GmbH: 1001-1999.

Dow Chemical Co.: 2001-2999.

H. Order form for requesting file copies

When requesting copies of files, use of Addendum 2 (SO Form 4) will greatly expedite processing of the request. Please attach a copy of Part E of this

substituents independently selected from the group consisting of hydrocarbyl, silyl, germyl, halo, cyano, and mixtures thereof, said substituent having up to 20 nonhydrogen atoms, or optionally, two such substituents other than cyano or halo together cause Cp or Cp' to have a fused ring structure, or one substituent on Cp and Cp' forms a linking moiety joining Cp and Cp'; Q independently each occurrence is selected from hydride, dialkylamido, halide, alkoxide, aryloxide, hydrocarbyl, and halosubstituted-hydrocarbyl radicals, said Q having up to 20 carbons with the proviso that in not more than one occurrence is Q halide; R₁, R₂, R₃, R₄, R₅ and R₆ are independently hydrogen, hydrocarbyl, silyl and combinations thereof, each of said R₁ to R₆ having up to 20 nonhydrogen atoms; and B is boron in a valence state of 3.

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Dow Chemical Co. v. Basell Polyolefine GmbH

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DECLARATION with a hand-drawn circle around the patents and applications for which
a copy of a file wrapper is requested.



RICHARD TORCZON
Administrative Patent Judge

Encl: Copy of STANDING ORDER (Paper 2)

cc (via overnight carrier):

For Dow Chemical Co.:
Stephen S. Grace
DOW CHEMICAL COMPANY
PO Box 1967
MIDLAND MI 48641-1967

For Basell Polyolefine GmbH:
Ashley I. Pezzner
CONNOLLY, BOVE & HUTZ, LLP
1220 N MARKET ST
WILMINGTON DE 19899
Tel: 302-888-6270
Fax: 302-658-5614

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Dow Chemical Co. v. Basell Polyolefine GmbH

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ADDENDUM 1

Filed on behalf of: [Name of Party]
By: [Name of lead counsel]
Name of backup counsel
Street address
City, State, and ZIP Code
Tel:
Fax:]

Paper No. [Leave blank]

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
(Administrative Patent Judge Torczon)**

Dow Chemical Company
(5,527,929)
Junior Party,

v.

Basell Polyolefine GmbH
(09/851,643),
Senior Party.

Patent Interference No. 105,250

TITLE OF PAPER

ADDENDUM 2

FILE COPY REQUEST
Patent Interference No. 105,250

Attach a copy of section E of this DECLARATION to this REQUEST. On the copy, circle each patent and application that you are requesting. Include the following information to facilitate processing of this REQUEST:

1. Charge fees to USPTO Deposit Account No. _____
2. Complete address, including street, city, state, zip code and telephone number
(do not list a Post Office box because file copies are sent by commercial overnight courier).

3. Telephone, including area code: _____



UNITED STATES PATENT AND TRADEMARK OFFICE

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES
BOX INTERFERENCE, WASHINGTON, D.C. 20231

Filed by: Richard Torczon
Telephone: (703) 308-9797
Facsimile: (703) 305-0942

MAILED

SEP 14 2004

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Applicants: Erker et al.
Application No.: 09/851,643
Filed: 05/08/01
For: Transition metal compound

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 105,250.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).



Richard Torczon
Administrative Patent Judge

INTERFERENCE DIGEST

Interference No. 105,250

Paper No.

Name: Gerhard Erker et al.

Serial No.: 09/851,643

Patent No.

Title: Transition metal compound

Filed: 05/08/01

Interference with Timmers et al.

DECISION ON MOTIONS

Administrative Patent Judge, _____ Dated, _____

FINAL DECISION

Board of Patent Appeals and Interferences, _____ Dated, _____

Court, _____ Dated, _____

REMARKS

This should be placed in each application or patent involved in interference in addition to the interference letters.